

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B04

PLR-101968-10

Date:

April 27, 2010

LEGEND:

Decedent =

Spouse =

Daughter =

Daughter's Spouse =

Trust =

Restated Trust =

Foundation =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Date 9 =
Year =
State =
State Statute =

Dear :

This responds to a letter dated January 11, 2010, and other correspondence, requesting rulings on behalf of Decedent's estate and Daughter, regarding the estate and gift tax consequences of a proposed disclaimer.

Facts

The facts submitted and representations made are as follows. On Date 1, Decedent and Spouse executed Trust. On Date 2, Decedent and Spouse executed a complete restatement of Trust (Restated Trust). On Date 3, Spouse died, survived by Decedent and their child, Daughter.

At Spouse's death, Restated Trust was divided into Trust A, Trust B, and Trust C with Decedent and Daughter named as co-trustees. Decedent's vested interest in the community property and his separate property were allocated to Trust A. Under Part B(4) of Article II of Restated Trust, during his life, Decedent was the sole beneficiary of Trusts B and C. Decedent was the primary beneficiary of Trust A for life, but the trustees could also distribute principal for the benefit of his dependents for specified purposes. During his life, Decedent had the right to amend or revoke Trust A and could withdraw all of the assets.

Under Part B(8) of Article II of Restated Trust, Decedent, as the surviving spouse, had a limited power to "amend or direct the distribution of" Trust C during his lifetime or "as of [Decedent's] death" and also had a limited power to amend or direct the distribution of Trust B "but only as of [Decedent's] death." Decedent's power over Trust B and Trust C could not be exercised in favor of Decedent, his creditors, his estate, or the creditors of his estate, nor could the power be exercised to discharge Decedent's legal obligations.

Part C(3) of Article II of Restated Trust, provides that at Decedent's death, "any property received upon or by reason of the death of [Decedent] shall be allocated to Trust A." The trustee is to administer all of the remainder of Trusts A, B, and C (to the

extent not effectively appointed) as follows. Under Part C(6) of Article II, after distributing specific gifts and tangible personal property, the trustee is to hold the residue of Trusts A, B, and C in trust for the benefit of Daughter (Daughter's Trust). During her life, Daughter is to receive so much of the net income and principal as the trustee in its discretion deems reasonable for Daughter's health, education, maintenance, and support. Daughter has a limited lifetime or testamentary power to appoint the trust to her issue or the issue of Decedent and Spouse's marriage. The power cannot be exercised in favor of Daughter, her creditors, her estate, or the creditors of her estate, nor can the power be exercised to discharge Daughters' legal obligations. At Daughter's death, to the extent not effectively appointed, her trust will be distributed to her then living issue by right of representation.

On Date 4, Decedent appointed all of the assets of Trust C outright to Daughter. On Date 5, Decedent executed an amendment of Trust A that provides if Daughter makes a qualified disclaimer under applicable federal and state law of Trust A assets that would otherwise be distributable to the trust established for Daughter's benefit under Restated Trust, the disclaimed assets will be distributed to Foundation (Date 5 Amendment).

On Date 6 (Date 6 Amendment), Decedent exercised his right to amend Trust A and Trust B to provide, in part, that Daughter will serve as sole trustee when Decedent ceases to serve. The Date 6 Amendment also revises the terms of Daughter's Trust. The new terms of Daughter's Trust are substantially similar to the original terms of that trust; however, the new terms provide Daughter a limited power to appoint the trust to or for the benefit of any person or charitable entity, but not in favor of Daughter, her creditors, her estate, or the creditors of her estate, and not to discharge Daughter's legal obligations.

On Date 7, Decedent died testate, a resident of State. He was survived by Daughter who is also a resident of State. Daughter is currently serving as sole trustee of Trusts A and B.

At Decedent's death, Trust A held cash, publicly traded securities, and a 100 percent interest in each of two parcels of real estate situated in State. Daughter proposes to execute a written disclaimer to disclaim all of her interest in specific assets that were in Trust A at Decedent's death and which would otherwise pass to Daughter's Trust at Decedent's death. It is represented that Daughter has not accepted any interest or benefit from any of the assets that will be subject to her disclaimer. Daughter will execute the disclaimer no later than Date 8 which is nine months after Decedent's date of death. Daughter will not receive any consideration in money or money's worth from Foundation or from any other person for making the disclaimer.

Foundation was established in Year and has received a letter from the Internal Revenue Service stating that it is an organization described in §§ 501(c)(3) and 509(a) of the Internal Revenue Code. Foundation currently has two directors, Daughter and

Daughter's Spouse. Foundation is governed by amended and restated bylaws dated Date 9 (Date 9 Bylaws). The Date 9 Bylaws provide, in part, that all assets Foundation receives as the result of a qualified disclaimer under § 2518 of the Internal Revenue Code made by any director or officer of Foundation, must be segregated from the other assets of Foundation and maintained in a separate account. In addition, the director or officer who executed the qualified disclaimer will have no power or authority to determine the contributions to be made to any charity from the separate account funded by the disclaimed assets or from any income earned on that account.

The taxpayers have requested the following rulings:

1. Daughter's proposed disclaimer will constitute a qualified disclaimer under § 2518 of the Internal Revenue Code.
2. Assuming that the proposed disclaimer is a qualified disclaimer under § 2518, the property that passes to Foundation as a result of Daughter's proposed disclaimer will be eligible for the estate tax charitable deduction under § 2055(a).

Ruling 1

Section 2046 provides that for estate tax purposes, disclaimers of property interests passing upon death are treated as provided in § 2518.

Section 2518(a) provides that, if a person makes a qualified disclaimer with respect to any interest in property, the federal estate, gift, and generation-skipping transfer tax provisions will apply with respect to such interest as if the interest had never been transferred to such person.

Under § 2518(b), the term "qualified disclaimer" means an irrevocable and unqualified refusal by a person to accept an interest in property, but only if: (1) such refusal is in writing; (2) such writing is received by the transferor of the interest, the transferor's legal representative, or the holder of the legal title to the property to which the interest relates not later than the date which is nine months after the later of (A) the date on which the transfer creating the interest in such person is made, or (B) the day on which such person attains age twenty-one; (3) the person disclaiming the interest has not accepted the interest or any of its benefits; and (4) as a result of such refusal, the interest passes without any direction on the part of the person making the disclaimer and passes either (A) to the spouse of the decedent, or (B) to a person other than the person making the disclaimer.

Section 2518(c)(1) provides that a disclaimer with respect to an undivided portion of an interest which meets the requirements of § 2518(b) shall be treated as a qualified disclaimer of such portion of the interest.

Under § 25.2518-1(b) of the Gift Tax Regulations, if a qualified disclaimer is made, the disclaimed property is treated, for federal gift, estate, and generation-skipping transfer tax purposes, as passing directly from the transferor, and not from the disclaimant, to the person entitled to receive the property as a result of the disclaimer. Accordingly, the person making a qualified disclaimer is not treated as making a gift.

Section 25.2518-2(d)(2) provides, in pertinent part, that if a beneficiary who disclaims an interest in property is also a fiduciary, actions taken by such person in the exercise of fiduciary powers to preserve or maintain the disclaimed property shall not be treated as an acceptance of such property or any of its benefits. A fiduciary cannot retain a wholly discretionary power to direct the enjoyment of the disclaimed interest. For example, a fiduciary's disclaimer of a beneficial interest does not meet the requirements of a qualified disclaimer if the fiduciary exercised or retains a discretionary power to allocate enjoyment of that interest among members of a designated class.

Under § 25.2518-2(e)(1), in general, a disclaimer is not a qualified disclaimer unless the disclaimed interest passes without any direction on the part of the disclaimant to a person other than the disclaimant. The disclaimer will not be qualified if the disclaimant, either alone or in conjunction with another, directs the redistribution or transfer of the property or interest in property to another person (or has the power to direct the redistribution or transfer of the property or interest in property to another person unless such power is limited by an ascertainable standard).

Section 25.2518-3(a)(1)(i) provides that if the requirements of the section are met, the disclaimer of all or an undivided portion of any separate interest in property may be a qualified disclaimer even if the disclaimant has another interest in the same property.

Section 25.2518-3(a)(1)(ii) provides that a disclaimant shall be treated as making a qualified disclaimer of a separate interest in property if the disclaimer relates to severable property and the disclaimant makes a disclaimer that would be a qualified disclaimer if such property were the only property in which the disclaimant had an interest. Severable property is property that can be divided into separate parts each of which, after severance, maintains a complete and independent existence. For example, a legatee of shares of corporate stock may accept some shares of the stock and make a qualified disclaimer of the remaining shares.

Section 25.2518-3(a)(2) provides, in part, that a disclaimer of both an income interest and a remainder interest in specific trust assets is not a qualified disclaimer if the beneficiary retains an interest in other trust property unless, as a result of the disclaimer, such assets are removed from the trust and pass, without any direction on the part of the disclaimant, to persons other than the disclaimant or to the spouse of the decedent. The disclaimer of an undivided portion of an interest in a trust may be a qualified disclaimer.

Section 25.2518-3(c) provides that the disclaimer of a specific pecuniary amount out of a pecuniary or nonpecuniary bequest or gift can be a qualified disclaimer provided that no income or other benefit of the disclaimed amount inures to the benefit of the disclaimant either prior to or subsequent to the disclaimer. Following the disclaimer, the amount disclaimed and any income attributable to such amount must be segregated based on the fair market value of the assets on the date of the disclaimer or on a basis that is fairly representative of the value changes that may have occurred between the date of transfer and the date of the disclaimer.

In Rev. Rul. 72-552, 1972-2 C.B. 525, the decedent, who was the president and a director of a corporation organized under § 501(c)(3), transferred property to the corporation. In his capacity as president and a director, the decedent, in conjunction with the other directors of the corporation, had the power to direct the disposition of the corporation's funds for charitable purposes. The ruling holds that, because the decedent retained the right, in conjunction with others, to designate the entities that would possess or enjoy the property transferred to the corporation, the property transferred by the decedent to the corporation was included in the decedent's gross estate at his death under § 2036.

Under State Statute, a beneficiary may disclaim an interest in whole or in part, or with reference to specific parts, shares, or assets, by means of a written disclaimer. Unless the instrument creating an interest directs to the contrary, the interest disclaimed passes as if the person disclaiming died immediately prior to the date of transfer of the interest.

In the present case, at Decedent's death, Trust A, as amended, became irrevocable, and the amendments to Trust B made under Decedent's exercise of his power over that trust also became effective. Daughter proposes to timely disclaim all of her interest in specific assets in Trust A that would otherwise pass at Decedent's death from Trust A to Daughter's Trust. It is represented that Daughter has not accepted any of the benefits of the interests in property she will disclaim. Daughter's actions in her capacity as the sole fiduciary of Trust A do not constitute acceptance of the assets held in Trust A. See, § 25.2518-2(d)(2).

Under the Date 5 Amendment, the property proposed to be disclaimed by Daughter will pass to Foundation. Pursuant to the terms of the Date 9 Bylaws of Foundation, the property passing to Foundation as a result of the disclaimer will be segregated and maintained in a separate account from the other assets of Foundation. Accordingly, Daughter will not have the power to make any determination with respect to the recipients of distributions of income or principal from the segregated funds of Foundation.

Accordingly, based on the facts submitted and representations made, we conclude that Daughter's proposed disclaimer will constitute a qualified disclaimer under

§ 2518 provided the disclaimer otherwise complies with the requirements of § 2518 and the applicable regulations, including § 25.2518-3.

Ruling 2

Section 2001 imposes a tax on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.

Section 2033 provides that the value of the gross estate includes the value of all property to the extent of the interest therein of the decedent at the time of his death.

Section 2036(a) provides that the value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in the case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, under which he has retained for his life or for any period not ascertainable without reference to his death or for any period that does not in fact end before his death, (1) possession or enjoyment of, or the right to the income from, the property, or (2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income from the property.

Section 2038(a)(1) provides that the value of the gross estate includes the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for adequate and full consideration in money or money's worth), by trust or otherwise, where the enjoyment thereof was subject at the date of his death to any change through the exercise of a power, either by the decedent alone or in conjunction with any person, to alter, amend, or revoke, or where the decedent relinquished any such power during the 3-year period ending on the date of the decedent's death.

Under § 2055(a)(2), for estate tax purposes, the value of the taxable estate shall be determined by deducting from the value of the gross estate the amount of all bequests, legacies, devises, or transfers to or for the use of any corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes. A corporation that qualifies under § 501(c)(3) is one that is organized and operated exclusively for these purposes.

Section 20.2055-1(a) of the Estate Tax Regulations provides that a deduction is allowed under § 2055(a) from the gross estate of a decedent who was a citizen or resident of the United States at the time of his death for the value of property included in the decedent's gross estate and transferred by the decedent during his lifetime or by will for charitable purposes.

Section 20.2055-2(c)(1)(i) provides that in the case of a bequest, devise, or transfer made by a decedent dying after December 31, 1976, the amount of a bequest,

devise, or transfer for which a deduction is allowable under § 2055 includes an interest that falls into the bequest, devise, or transfer as the result of a qualified disclaimer under § 2518.

In the present case, the value of the property in Trust A at Decedent's death is includible in Decedent's gross estate. Some of this property will be subject to Daughter's disclaimer. Under the Date 5 Amendment, property subject to Daughter's disclaimer will pass to Foundation as a result of the disclaimer. Foundation has received a letter from the Internal Revenue Service concluding that Foundation is an organization described in § 501(c)(3). Accordingly, based on the facts presented and the representations made, we rule that, assuming the proposed disclaimer is a qualified disclaimer under § 2518, the property that passes to Foundation as a result of Daughter's proposed disclaimer will be eligible for the estate tax charitable deduction under § 2055(a).

Except as specifically ruled herein, we express no opinion on the federal tax consequences of the proposed disclaimer under the cited provisions or under any other provisions of the Code. The estate tax ruling in this letter applies only to the extent that the relevant sections of the Internal Revenue Code are in effect during the period at issue.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

James Hogan
Chief, Branch 4
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure
Copy for section 6110 purposes

cc: